



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Detroit-Armor Corporation
File: B-225422
Date: February 26, 1987

DIGEST

1. Protester is not required to file its protest within 10 days of contract award notice, where it diligently pursues award details through a debriefing and a Freedom of Information Act request. Protest filed within 10 days of debriefing is timely.
2. The protester and contracting agency dispute whether there was a preaward contact to confirm the protester's proposal. If no contact was made, as the protester contends, since the solicitation permitted award on an initial proposal basis, the agency properly rejected protester's low offer which did not include a material component of the solicited target system. If there was contact, as the agency maintains, it did not constitute discussions because the protester was not afforded an opportunity to revise or modify its proposal. Therefore, award was properly made on the basis of initial proposals after a determination that the offered price was fair and reasonable.

DECISION

Detroit-Armor Corporation (Detroit-Armor) protests the award of a firm-fixed-price contract to Caswell International Corporation (Caswell) under request for proposals (RFP) No. USSS86-29 issued by the U.S. Secret Service (Secret Service) for the removal and replacement of existing target mechanisms and the target control system at the Beltsville Judgemental Range, Maryland. Detroit-Armor contends that its low offer was improperly rejected in favor of Caswell's proposal which did not comply with certain specification requirements; that the Secret Service did not allow Detroit-Armor to view Caswell's proposal at the debriefing; and that since the RFP's specifications were based on Detroit-Armor's product specifications and its price was lower, the contract should have been awarded to Detroit-Armor or all offers should have been rejected and the requirement resolicited.

The protest is denied.

The RFP required the contractor to furnish three items: a compact, table-top master control console, target mechanisms, and a hand-held module capable of controlling target mechanisms. The RFP also required that the manufacturer furnishing the equipment have no less than 5 years of experience in the fabrication and installation of target equipment and that the offeror submit with its proposal, a list of five representative completed target equipment installations in continuous use for 5 years. The RFP's evaluation factors for award advised that contract award would be made in accordance with the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.215-16 (1986), under which award may be made on the basis of initial offers without discussions.

Detroit-Armor's low proposal was priced at \$64,771, and Caswell's second low proposal was priced at \$94,400. The technical panel's report noted that Detroit-Armor's proposal offered only two of the three required components--target mechanisms and a portable radio command computer console with an attached hand-held console; a fixed and installed master control console was not included. According to the agency, during the technical evaluation of the proposals, Detroit-Armor was contacted to confirm that a separate master control console would not be provided. The panel report states that an unidentified Detroit-Armor representative advised that only the portable console, which could be placed on a table, would be provided and that a separate master control console would not be provided. The technical evaluation panel concluded that all three main components of the target system were necessary for proper operation at the intended location and determined that Detroit-Armor's proposal was technically unacceptable. The contracting officer (CO) determined that Caswell's proposal met the minimum needs of the government at a price that was fair and reasonable based upon a comparison of prices received in response to the solicitation and a value analysis performed by technical personnel. The contract was awarded to Caswell on the basis of initial offers received on September 29, 1986. Detroit-Armor received formal notification of the contract award on October 3, 1986. After a debriefing held on October 21, 1986, Detroit-Armor filed its protest on October 23, 1986.

The Secret Service contends that Detroit-Armor's protest is untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1986), which require that a protest be filed not later than 10 working days after the basis for protest is known or should have been known. The Secret Service states that Detroit-Armor knew on October 3, 1986, that the contract

had been awarded to Caswell and was required to file its protest within 10 working days. Rather than filing a protest, the Secret Service states that Detroit-Armor called the CO 5 days after award notification to determine whether there was a typographical error in its proposal. After being advised on October 9, 1986, that there was no typographical error, Detroit-Armor requested a debriefing that was held on October 21, 1986. During this period, Detroit-Armor also requested certain pertinent procurement documents, including a copy of Caswell's contract, under the Freedom of Information Act (FOIA). (The documents were received after the protest was filed.) Detroit-Armor contends that as a result of the debriefing, it concluded that irregularities had occurred during the procurement and that its October 23 filing is therefore timely.

The October 3 notification merely advised Detroit-Armor that an award had been made to Caswell and that Detroit-Armor's proposal took exception to the specifications. Detroit-Armor diligently proceeded to obtain the award details. In these circumstances, we conclude that the protest filed within 10 days of the debriefing was timely filed. Raytheon Support Servs. Co., B-219389.2, Oct. 31, 1985, 85-2 CPD ¶ 495.

Detroit-Armor concedes that, although it intended to provide a master control console, it inadvertently failed to offer the console in its proposal. The protester contends that the Secret Service knew that Detroit-Armor had and could provide this equipment since it based the specifications on Detroit-Armor's specifications for the master control console. The protester denies that any of its representatives were contacted or, if contacted would have advised the agency that the omitted component would not be supplied. If there were any questions in this regard, the protester contends that the Sales Manager who signed the proposal should have been contacted, not an unidentified representative.

The dispute surrounding the preaward contact with Detroit-Armor does not affect our conclusion that the agency properly rejected the protester's proposal. If no contact was made, since the RFP permitted award on an initial proposal basis an agency may properly reject a low offer which does not include a material component of a solicited system. Proffitt and Fowler, B-219917, Nov. 19, 1985, 85-2 CPD ¶ 566.

If there was contact, we fail to see how it constituted discussions as Detroit-Armor contends. Whoever was contacted apparently was not afforded an opportunity to revise or modify its proposal, but merely to confirm the proposal contents. In any event, no matter who was called, if anyone, the agency would not be precluded from awarding on an initial proposal

basis merely because an unacceptable lower offer could be made acceptable through discussions. Marvin Eng. Co., Inc., B-214889, July 3, 1984, 84-2 CPD ¶ 15. Consequently, the Secret Service properly awarded the contract on the basis of initial proposals.

Detroit-Armor also contends that Caswell failed to provide operating manuals and that Caswell could not have met the RFP requirement to provide with the proposal a list of five prior representative target equipment installations. With respect to the operating manuals, the RFP did not require that manuals be submitted with the proposals. In this regard, we note that whether Caswell ultimately provides the operating manuals in performing the contract is a matter of contract administration and is not for consideration under our bid protest function. Motorola Communications & Elec., Inc., B-223715, Sept. 19, 1986, 86-2 CPD ¶ 325. Concerning the second basis of protest, Caswell provided a list of five installations that was reviewed by the technical evaluation panel and found to be satisfactory. In its comments on the agency report, Detroit-Armor contends that Caswell's list does not include installations using the type of equipment required by the RFP. The specifications only required a list of five representative completed target equipment installations. Contrary to the protester's contention, the RFP did not require that the installed target equipment be the same type of equipment specified in the RFP. Detroit-Armor's contention therefore lacks merit.

The protester further contends that the Secret Service did not allow it to see Caswell's proposal at the debriefing. In response, the Secret Service states that the debriefing was held in accordance with the FAR, 48 C.F.R. § 15.1003, under which debriefing information need only include the government's evaluation of the significant weak or deficient factors in a proposal, and need not include a point-by-point comparison of offerors' proposals. Although the FAR provision does not require contracting agencies to provide unsuccessful offerors with copies of competitors' proposals, the protester subsequently obtained a copy of Caswell's proposal through a FOIA request. Therefore, we see no prejudice in this regard.

The protest is denied.

for *Seymour E. Van*
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General Counsel